

STATE APPELLATE DEFENDER OFFICE

Main Office: SUITE 3300 PENOBSCOT • 645 GRISWOLD • DETROIT, MICHIGAN 48226-4281
Phone: 313.256.9833 • Fax: 313.965.0372
CLIENT CALLS 313.256.9822

JAMES R. NEUHARD
DIRECTOR

DAWN VAN HOEK
CHIEF DEPUTY DIRECTOR
DETROIT/LANSING

JONATHAN SACKS
DEPUTY DIRECTOR
DETROIT



LANSING OFFICE
101 NORTH WASHINGTON
14TH FLOOR
LANSING, MICHIGAN 48913-0001
Phone: 517.334.6069 • Fax: 517.334.6987

Website: www.sado.org

July 30, 2010

Mr. Corbin Davis
Supreme Court Clerk
PO Box 30052
Lansing, MI 48909

RE: ADM File No. 2009-19
Proposed Amendment of Rule 6.502

Dear Mr. Davis,

I write to oppose the proposed one year deadline on filing a motion for relief from judgment. Attaching a deadline removes one of few avenues for relief of the wrongly convicted while greatly restricting access to justice.

It is well documented nationally, that over the last decade, dozens of actually innocent prisoners have been released from prison. These wrongful prosecutions occurred due to mistakes in eyewitness identifications, false confessions, use of junk science, improper investigations, prosecutorial misconduct, or ineffective assistance of counsel. Running a deadline for a motion for relief from judgment from “the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence” sets up an artificial and unnecessary procedural bar for litigating claims of actual innocence.

Investigations and scientific testing to uncover wrongful conviction could take years to complete. Under the proposal, investigators, attorneys, or even prosecutors would need to conduct investigations based upon their subjective judgment of when one year after the exercise of “due diligence” will expire. Many actually innocent defendants will simply be unable to present their claim because an investigation took several years, or initial trial and appellate counsel failed to exercise “due diligence.”

Although efficiency in the criminal justice system is a laudable goal, it should never replace relief for the actually innocent. The claim that a one year deadline for motions for relief from judgment would even improve efficiency is debatable. In 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) established a one year deadline for filing of habeas petitions. Nevertheless, a non-partisan study of the changes shows that federal courts have actually become less efficient. The number of issues per filings has increased, and a significant amount of litigation is spent on interpreting procedural default, exhaustion, and timing requirements.¹

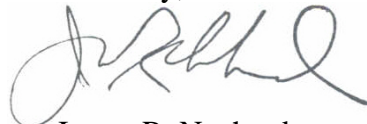
Motions for relief from judgment have a number of difficult procedural and legal requirements. The proposed time limit guarantees that unrepresented indigent defendants would disproportionately fail to meet the new deadline.

Finally, the claim that the lack of a one year deadline for motions for relief from judgment somehow results in a defendant missing the one year deadline for federal habeas petitions is misguided. Defendants who wish to preserve additional issues on collateral appeal for habeas petitions will be able to file their motion for relief from judgment within a year, and thereby toll the habeas deadline. Those conducting actual innocence investigations will use the longer timeline to make their claim.

The proposed amendment to MCR 6.502 sacrifices potentially innocent defendants and denies access to justice for the poorest prisoners who cannot afford attorneys, all in a questionable and unnecessary effort to increase efficiency.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Neuhard', written in a cursive style.

James R. Neuhard
Director
State Appellate Defender Office

¹ See *Final Technical Report: Habeas Litigation in US District Courts*, Vanderbilt University Law School, National Council for State Courts, pp. 54-62, available at <http://law.vanderbilt.edu/article-search/article-detail/download.aspx?id=1639>; House of Representatives Committee on the Judiciary, Hearing before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, *Impact of Federal Habeas Corpus Limitations on Death Penalty Appeals*, December 8, 2009, prepared statement of Honorable Gerald Kogan, pp. 6-8; available at http://judiciary.house.gov/hearings/printers/111th/111-66_53944.PDF.